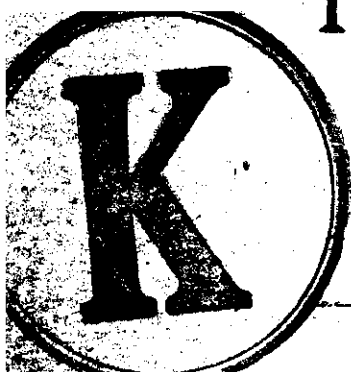




19 49.

File No. L. A. Loans
II/49
(R)

PS F Legal Deptt.

B BRANCH

Subject:— Rules under the
Local Authorities Loan
Act 1914

File No. L. A. Loans II/49
(R)

545

Statement of the Case.

It will appear from para. 3 of the letter of the President of the Ahmedabad Municipality dated 5th March 1947 at p. 2 ante that the Municipality had in anticipation of sanction of Government for raising a loan spent certain sums and entered into contracts for starting a Bus Service. The Municipality desires that the amount spent should be treated as advance from the general-revenues and other funds of the Municipality and should be recouped from the loan fund when sanctioned and raised.

2. Section 3(1) of the Local Authorities Loans Act, 1914 (IX of 1914), specifies the purposes for which a local authorities may borrow on the security of its fund. Under clause (i) of sub-section (1) of section 3 a local authority may borrow for the purpose of the carrying out of any works which it is legally authorised to carry out. Under clause (v) of that sub-section a local authority may borrow for the purpose of repayment of money previously borrowed in accordance with law. As a local authority cannot borrow from itself and clause (v) will have no application when the local authority desires to raise a loan to recoup the amount spent by it from the general balances. The question for consideration is whether a local authority can raise a loan to recoup the expenditure departmentally incurred by it for carrying out a work, which it is legally authorised to carry out.

3. The question was examined by the R.L.A. more than once in the past. In his opinion No.5970, dated 16th November 1932 the R.L.A. held that no where in section 3 is it provided that money can be borrowed to replenish the balances and that a loan to recoup the balances will not be within the provisions of the Act. This opinion was based on the view that the

the provisions of section 3 and the Bombay Local Authorities Loans Rules, 1923, have no retrospective effect and that section 3 does not authorise the carrying out a work and then raising a loan to defray the cost of after the completion of the work. Later on there was a case in which a local authority wanted loan to pay a contractor for works already completed. To enable the local authority to raise loan in that case, the R.L.A. in his opinion No.1769, dated 21 25th March 1933 advised that the definition of 'loan' in rule 2(3) should be amended with retrospective effect so as to include a loan for the payment of the cost of carrying out of any work. The definition was amended accordingly. It was held that such amendment would fall within section 4(1) (ii) and would not be inconsistent with the Act. The two opinions referred to above, however, seem to be inconsistent. According to the view taken in the latter opinion a loan could be raised for paying a contractor for works already completed. If this view is correct and if a contractor can be paid, on principle there appears no objection to recoup the expenditure departmentally incurred for carrying out a work.

4. As the question is important the Advocate General is requested to favour Government with his views in the matter.

Sd/-P.M.Lad.
23/4/48
Remembrancer of Legal Affairs.

U.R. to Advocate General, Bombay, No.3994

Dated the 24th April 1948.

3K3. 8/6/ 48.

No. 17 of 1949.

Advocate General's Chambers,
High Court,
Bombay, the 23rd April 1949.

U.O.R. to the Advocate General of Bombay,
No.3994 dated 24th April 1948.

O p i n i o n

Section 3(1) of the Local Authorities Loans Act, 1914, as amended in 1933, enables a local authority to borrow on the security of its funds for certain purposes, one of them being the carrying out of any works which it is legally authorised to carry out, another being the repayment of money previously borrowed in accordance with law. The Ahmedabad municipality spent moneys from its general funds on certain works, and now seeks a loan to make good what was paid. To look upon this as an attempt to repay moneys borrowed from itself is, in my opinion, too narrow a view. The borrowing clearly is one for the carrying out of works which are legally authorised. There is nothing in the section which says that the loan must be taken before the works are begun. If in fact works have been carried out, and the loan will be applied, though not directly, for that purpose, that is to say, to repay money expended for the purpose, then the transaction clearly falls within section 3(1) clause (1).

Sd/- C.K.Daphtary
Advocate General.

BKS. 8/6/ 49.

Legal Department.

As the question was important the Advocate General was consulted. Copies of this Department U. R. No.3994 dated 24th April 1948 and the Advocate General's opinion No.17 dated 23rd April 1949 are sent herewith.

2". In view of the Advocate General's opinion amendment of the Local Authorities Loans Act, 1914, is not necessary. For the purpose in view, amendment of the definition of "loan" given in rule 2(3) of the Bombay Local Authorities Loans Rules, 1923, would be sufficient. A requisite draft notification amending the rule is sent herewith.

3. There appears no legal objection to giving retrospective effect to the amendment as proposed by F.D. as the definition is inclusive and the amendment is intended to clarify the scope of the definition. The Department may fill in the suitable date from which it is intended to give retrospective effect.

Id/-J.R.D. 4/8
Additional Secretary to Government.

U.R. to H & L.C.D. No.ES28 dated the 4th August, 1949.

BES. 8/6/ 49.

NOTIFICATION.

Health and Local Government.
Department.

Bombay Castle, August 1949.

No.

.- In exercise of the

Local
Authorities
Loans Act,
1914.

powers conferred by section 4 of the Local Authorities Loans Act, 1914 (IX of 1914), in its application to the Province of Bombay, the Government of Bombay is pleased to amend the Bombay Local Authorities Loans Rules, 1923, as follows, namely :-

To clause (3) of rule 2 of the said Rules, the following shall be added namely :-

"or a loan for the recoupment of any expenditure incurred by a local authority with the previous sanction of the Provincial Government for the carrying out of any such work. "

This amendment shall be deemed to have been

To be filled in by
H.&L.G.D.

made on and to have effect from the ' day of " 194

By order of the Governor of Bombay,

Secretary to Government.

BKS. 8/6/ 4c.